

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

UNITED STATES OF AMERICA)	CRIMINAL NO.: 4:12-363-RBH
)	
)	
vs.)	
)	
)	
MICHAEL SHANE SMITH)	

FINAL ORDER OF FORFEITURE
AS TO MICHAEL SHANE SMITH

This matter is before the court upon the United States' motion for a final order of forfeiture as to Michael Shane Smith ("Defendant", "Smith") who was convicted of wire fraud. A Judgment and Preliminary Order of Forfeiture ("POF") as to Smith was filed on February 13, 2013. The record in this case establishes the following:

1. On April 24, 2012, a federal grand jury in this district returned an Indictment charging Smith with two counts of wire fraud, in violation of 18 U.S.C. § 1343.

2. The Indictment provided that upon Smith's conviction, certain property enumerated therein, or equivalent substitute assets, would be subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c).

3. On November 27, 2012, Smith pled guilty to Count 1 of the Indictment, charging him with wire fraud, in violation of 18 U.S.C. § 1343.

4. Based upon Smith's conviction, and other matters appearing in the

record, the court issued a Judgment and Preliminary Order of Forfeiture (“POF”) determining that the below-described property is subject to forfeiture, in that such property was derived from criminal proceeds from the wire fraud. The court further found that Smith has an interest in such property, and that the property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c).

5. The court further found that the government has established the requisite nexus between the said property subject to forfeiture and the offenses for which Smith was convicted, and that property is therefore forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c), subject to the provisions of 21 U.S.C. § 853(n) governing third-party rights.

6. The court further found that the United States is entitled to a judgment of forfeiture and possession of said property pursuant to 21 U.S.C. §853(g) and Rule 32.2 of the Federal Rules of Criminal Procedure.

7. On February 13, 2013, this court entered the POF as to Smith, forfeiting all of his right, title and interest in the property described below to the United States:

a. Vehicle:

2007 Nissan Titan Pick Up Truck
VIN: 1N6BA07A17N212131
Registered to: Michael Shane Smith
Asset ID: 12-USS-001433

b. Contents of 401K Account:

All funds (now or formerly valued at approximately \$133,182.84) in a 401(k) account in the name of Michael Shane Smith, (Plan Name "Wolseley North America 401(k) Plan") believed to currently be in the possession of Prudential Bank & Trust, FSB, 280 Trumbull Street, Hartford, CT 06103.
Asset ID: 12-USS-001434

8. The POF directed the United States to publish notice of the court's Order and the intent of the United States to dispose of the property in accordance with law. The POF also provided that following publication, and upon adjudication of all third-party interests in the said property, the court would enter a Final Order of Forfeiture pursuant to 21 U.S.C. § 853(n).

9. Beginning on March 14, 2013, and running at least 18 hours per day through April 12, 2013, as required by Rule G(4)(a)(iv)(c) of the Supplemental Rules of Admiralty or Maritime Claims and Asset Forfeiture Action, the United States published notice of the forfeiture on the government website "www.forfeiture.gov", a website of general circulation within the United States and the State of South Carolina, notifying any person, other than the Defendant in this case, claiming interest in the forfeited property that they must file a Petition within sixty (60) days of the notice for a hearing to adjudicate the validity of any alleged legal interest in the property seized. No petitions or other responsive pleadings have been filed by any persons based upon notice by publication, and the deadline for filing a claim based

upon such notice expired on May 13, 2013, with no extensions having been requested, consented to, or granted by the court.

10. Additionally, the government identified and sent direct notice of this forfeiture action, along with a copy of the indictment and the POF (collectively, “notice”, or “notice of forfeiture”), to the known potential claimant to the property, which is Tamara S. Smith. The government sent the notice of forfeiture to Mrs. Smith’s the last known address via regular and certified mail. The notice advised that in order to contest the forfeiture, a petition must be filed within 30 days after the notice was sent. The deadline for filing a claim based upon actual notice expired on April 13, 2013, with no extensions to this time limit having been requested, consented to, or granted by the court.

11. The United States has received no claims or petitions as to the property described below, and the time to file such claims and petitions has passed as provided for by the provisions of 21 U.S.C. § 853(n); therefore, all claims to such property are forever foreclosed and barred.

12. The court has previously determined the Government has established the requisite nexus between the said property and the offense for which the Defendant has been convicted; therefore, the said property shall be forfeited to the United States pursuant to pursuant to 18 U.S.C. § 981(a)(1)(C), and 28 U.S.C. § 2461(c).

NOW THEREFORE, upon motion of the United States and for good cause shown, It is hereby ORDERED, ADJUDGED and DECREED:

1. The below described property, and all right, title and interest in and to the following property is hereby forfeited to the United States of America:

a. Vehicle:

2007 Nissan Titan Pick Up Truck
VIN: 1N6BA07A17N212131
Registered to: Michael Shane Smith
Asset ID: 12-USS-001433

b. Contents of 401K Account:

All funds (now or formerly valued at approximately \$133,182.84) in a 401(k) account in the name of Michael Shane Smith, (Plan Name "Wolseley North America 401(k) Plan") believed to currently be in the possession of Prudential Bank & Trust, FSB, 280 Trumbull Street, Hartford, CT 06103.
Asset ID: 12-USS-001434

2. Pursuant to 21 U.S.C. § 853(n)(7), clear title in and to the above-described property is vested in the United States of America, its successors and assigns, and no other right, title or interests exists therein. All claims to the above-described property are forever foreclosed and barred and the said property shall be disposed of by the United States Secret Service ("USS") in accordance with law.

3. The United States Secret Service and/or their designees are hereby requested to seize the above-described property as directed by the United States Attorney's Office, to be held by the United States Secret Service in its secure custody and control pending the disposal of the property.

4. The court shall retain jurisdiction to resolve disputes which may arise and to enforce and amend this Order as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

5. The Clerk, U.S. District Court for the District of South Carolina, shall provide one certified copy of this Order to the United States Attorney's Office Asset Forfeiture Unit for service on interested third parties and for other purposes.

IT IS SO ORDERED.

s/R. Bryan Harwell
R. BRYAN HARWELL
UNITED STATES DISTRICT JUDGE

This 18th day of June, 2013

Florence, South Carolina